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June 30, 1998

Hya n d

Ms. Magalie Salas
Secretary
Federal Communications Commission
1919 M Street, N.W.
Room 222
Washington, D.C. 20554

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JUN 30 1998

**FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY**

Re: WT Docket 96-198 – Implementation of Section 255 of the
Telecommunications Act of 1996

Dear Ms. Salas:

Enclosed please find an original and nine (9) copies of Lucent Technologies
Comments for filing in the above-referenced proceeding. Also enclosed is a copy to be
stamped and returned for our files.

Please do not hesitate to contact me should there be any questions.

Sincerely,

Diane Law

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

WT Docket No. 96- 198

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Executive Summary

Lucent fully supports the goals of Section 255 and applauds the Commission's desire to increase access to telecommunications equipment by Americans with disabilities. Lucent shares the Commission's commitment to ensuring that disabled Americans are not precluded from enjoying the benefits of improved telecommunications technology and will continue to develop accessible **functionalities** for its products. When crafting its Section 255 rules, Lucent requests that the Commission consider the following:

- All telecommunications and customer premises equipment ("CPE") marketed in the United States is subject to the obligations imposed by Section 255. The "manufacturer" or party introducing equipment into the marketplace in its final form under its brand name should be responsible for assuring compliance with these obligations.
- The definition of "disability" should include only people who experience, as a result of physical or mental impairments, difficulty accessing telecommunications equipment and CPE.
- The overall resources of an entire manufacturing corporation are an inappropriate basis upon which to assess whether an action, with respect to an individual product or product line, is readily achievable.
- The Section 255 complaint resolution processes must **strike** a balance between the needs of consumers and manufacturers.
 - The informal complaint process must allow manufacturers sufficient time to respond fully to consumer complaints.
 - To prevent frivolous complaints and address the needs of business equipment customers and manufacturers, standing requirements for complainants should be imposed.
 - Commercially sensitive information submitted to the Commission pursuant to Section 255 must be protected.

Introduction

Pursuant to Section 1.4 15 of the Federal Communications Commission's Rules, Lucent Technologies ("Lucent") respectfully submits the following Comments in response to *the Notice of Proposed Rulemaking*, FCC 98-55, released April 20, 1998 ("Notice"). The Notice sought comment on issues related to Section 255 of the Communications Act regarding the accessibility of telecommunications services and CPE to persons with disabilities.¹ Lucent manufactures CPE and telecommunications equipment and is a major supplier of such equipment in the United States and around the world. Its telecommunications equipment is used by local, long distance, and wireless carriers to provide telecommunications services, and its CPE serves a wide range of businesses.*

Section 255 requires manufacturers of telecommunications equipment and CPE to "ensure that the equipment is designed, developed, and fabricated to be accessible to and usable by individuals with disabilities, if readily achievable." In addition, if products are not "accessible," manufacturers must "ensure that the equipment . . . is compatible with existing peripheral devices or specialized CPE commonly used by individuals with disabilities to achieve access, if readily **achievable**."³

Lucent fully supports the goals of Section 255 and applauds the Commission's desire to increase access to telecommunications equipment by persons with disabilities. Lucent shares the Commission's commitment to ensuring that disabled individuals are not

¹ 47 U.S.C. § 255.

² Lucent no longer makes general consumer telecommunications products. Effective October 1, 1997, Philips Consumer Communications, a **firm** in which Lucent owns a minority interest, is the successor in interest to Lucent's Consumer Products division.

³ 47 U.S.C. § 255.

precluded from enjoying the benefits of improved telecommunications technology and will continue to develop accessible **functionalities** for its products. Most of Lucent's business equipment terminals come equipped with numerous features that increase their accessibility by people with disabilities. For example, Lucent terminals have raised number 5 keys which provide an orientation point for people with vision disabilities, volume control buttons and lights that flash for incoming calls which aid people with hearing disabilities, and speaker phones which assist people with limited mobility or dexterity. Furthermore, all Lucent products are reviewed in the design stage by human factors experts who analyze new products and improve those products' ease of use for all people.

Lucent supports Commission action that furthers the goals of Section 255 and agrees (with the clarifications requested) with the following conclusions or statements listed by the Commission in the *Notice*:

- The Commission has authority to promulgate **rules**⁴ to enforce Section 255⁵ and its ultimate decisions need not be based on the Access Boards

Guidelines;⁶

- Section 255 explicitly precludes private rights of action. Section 255 grants the Commission exclusive authority to resolve Section 255 **complaints**;⁷
- Section 255 applies to equipment only to the extent the equipment serves a telecommunications **function**.⁸ Lucent suggests that if equipment is not

⁴ The Commission generally does not have jurisdiction over the activities of manufacturers. *Notice* at **paras.** 26-28.

⁶ *Notice* at **para.** 30.

⁷ *Notice* at **paras.** 32-34.

⁸ *Notice* at **para.** 53.

intended to serve and is not marketed for telecommunications functions, such equipment should not be subject to Section 255. Manufacturers should not be responsible for non-intended uses of products;

- “Section 25 1(a)(2) governs *carriers’ configuration* of their network **capabilities**.”⁹ Lucent requests that the Commission clarify that telecommunications carriers are primarily responsible for compliance with Section 25 1. Because manufacturers can not control carriers’ network configuration choices, manufacturers should not be subject to Section 25 1 (a)(2). Manufacturers, however, will work with telecommunications carriers to develop equipment to carriers’ specifications which will enable carriers to provide accessible services;
- Manufacturers of telecommunications equipment and CPE must develop and manufacture “accessible” equipment; however, they are responsible only for those accessibility features over which they have **control**.¹⁰ Lucent suggests that the Commission clarify that if equipment is manufactured prior to the passage of Section 255 rules, the original manufacturer is not responsible for making that equipment compliant with Section 255. Furthermore, if such equipment is refurbished and resold by other entities after passage of Section 255 rules, the original manufacturer should not be responsible for making that equipment compliant with Section 255 because the resale of used equipment is not within the manufacturer’s control;

⁹ Notice at **para.** 65.

¹⁰ Notice at **para.** 79.

- “Readily achievable” means “easily accomplishable and able to be carried out without much difficulty or expense.” The definition of “expense” includes dollar costs, the costs of other resources, and opportunity costs.” Lucent agrees with the Commission and with commenters that suggest “expense” must include all costs, *i.e.*, dollar costs, opportunity costs, and research and development costs;¹³
- Timing is a factor that must be considered when evaluating whether adding a particular accessibility feature is readily achievable, because, in general, it becomes more difficult and costly to add a particular feature when a product has passed the development stage. “[O]nce a product is introduced into the market without accessibility features that were not readily achievable at the time, Section 255 does not require that the product be modified to incorporate subsequent, readily achievable access features.”¹⁴

Although we support many of the *Notice’s* tentative conclusions, Lucent requests that the Commission consider the following arguments regarding the Commission’s implementation of Section 255.

All telecommunications and CPE marketed in the United States is subject to the obligations imposed by Section 255. The party introducing equipment into the marketplace in its final form under its brand name should be responsible for assuring compliance with these obligations.

¹¹ *Notice* at **para.** 97.

¹² *Notice* at **para.** 104.

¹³ *Notice* at **para.** 103.

¹⁴ *Notice* at **para.** 120.

The Commission sought comment on its proposal to define a “manufacturer” as an entity “that sells to the public or to vendors that sell to the public; a final **assembler**.”¹⁵ Lucent largely supports that conclusion, however, we would **clarify** that the final assembler should be the entity under whose brand name the equipment is marketed. This approach will provide the most certainty for consumers of telecommunications equipment and CPE. Where a manufacturer designs, develops, and fabricates equipment it introduces into the marketplace under its own brand name, responsibility for Section 255 compliance is clear. In addition, in such situations, consumers will have no difficulty identifying the responsible contact for accessibility information or complaints on a particular product. The entity whose name appears on a product, however, is not necessarily the entity that designs and manufactures the **product**.¹⁶ In those instances, unless the entity whose brand name appears on the product is considered the “**manufacturer**,”¹⁷ consumers and the Commission will not easily be able to **identify** and contact the “manufacturer” of the product. If the Commission adopts this definition, the consumer or the Commission would simply contact the entity whose name appears on the product. Of course, where the design, development, fabrication, and marketing of equipment involves two or more firms, those parties would be free to apportion, by contract among themselves, responsibility for handling informal, Section 255 consumer

¹⁵ Notice at **paras.** 59-60.

¹⁶ For example, in contract manufacturing, a **firm** fabricates equipment designed, developed, and marketed by another **firm**. In private label arrangements, a firm sets specifications for and markets under its own name, equipment designed, developed, and marketed by another firm. In license agreements, a firm manufactures and markets equipment designed by another **firm**.

¹⁷ Entities that do not design or manufacture products **and** that place their brand names on products, *i.e.* service providers or retail stores, should be considered “manufacturers” only for Section 255 purposes.

complaints and liability for the consequences of equipment found not to be in compliance with the obligations of Section 255.

The Commission should limit the definition of “disability” to include only people who experience, as a result of physical or mental impairments, difficulty accessing telecommunications equipment and CPE.

The Commission proposed to adopt the ADA definition of “disability:” “a physical or mental impairment that substantially limits one or more of the major life activities of an individual; a record of such an impairment; and being regarded as having such an **impairment**.”¹⁹ Lucent disagrees with the Commission’s proposal and urges the Commission to limit the definition of “disability” to include only people who experience, as a result of physical or mental impairments, difficulty accessing telecommunications equipment and CPE. In the context of Section 255, it makes little sense to include individuals who do not have physical or mental impairments and who do not experience difficulties accessing telecommunications equipment and CPE within the definition of “disability.” Requiring manufacturers to consider and document the needs of people without impairments or who do not experience difficulty accessing telecommunications equipment in the Section 255 development and manufacturing process will deplete resources that could be used to develop new and better accessibility features.

Furthermore, in order to provide guidance for equipment manufacturers in interpreting the definition of “disability,” the Commission proposed to use the Access Board’s list of categories of common **disabilities**.²⁰ The Commission, however, stated that

¹⁸ Notice at para. 70.

¹⁹ Notice at para. 68.

²⁰ Notice at para. 70. The Access Board listed disabilities affecting hearing, vision, movement, manipulation, speech, and interpretation of information.

the list is neither exhaustive nor final. The Commission should find that, under Section 255, manufacturers are required to develop accessibility features only for individuals with disabilities that fall within the Access Board's list of categories. A manufacturer cannot and should not be required to anticipate the needs of individuals with categories of disabilities that were not recognized by the Access Board or the Commission. The Commission could prospectively amend the Access Board's list in a separate rulemaking proceeding, but should not hold manufacturers retroactively responsible for types of disabilities that are not identified when the Commission adopts its Section 255 rules.

The overall resources of an entire manufacturing corporation are an inappropriate basis upon which to assess whether an action, with respect to an individual product or product line, is readily achievable.

Although the Commission correctly noted that expense must be considered in the definition of "readily achievable," the Commission added that the financial resources of the organization that has legal responsibility for, and control over, a telecommunications product or equipment should be presumed to be available to make that product **accessible**.²¹ The Commission noted that the presumption could be rebutted by showing that the sub-unit actually responsible for the product or service in question does not have access to the full resources of the **corporation**.²²

Lucent strongly disagrees with that conclusion. Consideration of corporate resources will impose more stringent accessibility standards on products offered by large firms than are imposed on small firms, to the detriment of large firms and consumers. Firms that employ more than a handful of people divide their personnel into specialized

²¹ Notice at **para.** 109.

²² Notice at **para.** 109.

and efficient teams or units. For manufacturers, those units may focus on particular product groups or customers and make decisions largely in the same manner as small firms. Including corporate resources will penalize units of large firms because they will be subject to higher accessibility standards. In all cases, small firms will be permitted to add less accessibility features than a similarly-sized unit of a large firm. The products of small firms with less accessibility features could be marketed at lower prices than the products with accessible features marketed by larger firms, placing the latter at a significant disadvantage in a competitive marketplace. This marketplace disadvantage will, inevitably, result in reduced profit margins for large firms and will place in jeopardy the continued offering of those products.

More importantly, by treating specialized units of large firms differently than small firms, the Commission will stifle the development of new accessibility features and new technologies. For identical products and features, units of large firms always will be required to incorporate less profitable accessibility features than similarly-sized small firms. Because large firms' accessible products will be less profitable than small firms' products, large firms will have little incentive to devote resources to the development of accessible products. This disincentive will hinder the growth of accessible technology. Moreover, because large firms will have smaller profit margins on their products than small firms, this policy may discourage large firms from pursuing new technologies.

Inclusion of corporate parent resources does not yield a competitively neutral outcome and is ill suited to the reality of most manufacturers. Regardless of the size or financial resources of a corporation, individual product management teams or units of a corporation are provided finite financial resources to develop and market particular



products. Those units are generally evaluated on their ability to stay within their allotted budgets and to generate profits that meet or exceed anticipated levels. Accordingly, unit decisions to invest in developing new or innovative technology take into account only those resources allotted to the unit.

For all of the above reasons, the Commission, in determining whether a given product adequately incorporates readily achievable accessibility features, should consider only the resources that are realistically available for product development - the resources of the unit responsible for the product.

The Commission's complaint resolution processes must strike a balance between the needs of consumers and manufacturers.

In the informal complaint process, the Commission should allow manufacturers sufficient time to respond fully to consumer complaints.

Lucent shares the Commission's commitment to resolving Section 255 complaints as quickly as possible; however, the Commission's proposed fast-track complaint process will not achieve the desired results. The Commission proposed to permit customers to contact the Commission with fast-track complaints and to require manufacturers to respond to the Commission within 5 days of receipt of the **complaint**.²³ Because a product marketed in the United States may be manufactured and developed anywhere in the world, manufacturers may not be able to identify and contact the people who will be able to address a particular consumer complaint within 5 business days, let alone respond to the complaint. A **5-day** deadline will not provide consumers and manufacturers sufficient time to resolve possibly complex complaints so most fast-track complaints will proceed into the Commission's informal and formal complaint resolution processes. The

short deadline, therefore, will undermine the purpose of the fast-track process – the speedy resolution of complaints without significant Commission involvement. The Commission should allow a more reasonable response time, which will permit manufacturers to satisfy the needs of people with disabilities without further Commission action or intervention. Lucent suggests that manufacturers be given at least 30 days to respond to fast-track **complaints**.²⁴

To prevent frivolous complaints and address the needs of business equipment customers and manufacturers, the Commission should impose standing requirements for complainants.

In addition to the Commission's proposed informal complaint timetable, Lucent strongly disagrees with the Commission's decision to impose no standing requirements for individuals wishing to file Section 255 complaints. First, failure to impose a standing requirement may encourage the filing of frivolous Section 255 **complaints**.²⁵ Permitting only individuals with disabilities to file fast-track, informal, and formal complaints would eliminate this potential problem and would ensure that manufacturers' resources are dedicated to solving actual accessibility difficulties.

Second and more importantly, failure to impose a standing requirement will create additional difficulties for manufacturers of business equipment. By allowing employees of manufacturer's customers to contact directly manufacturers with workplace accessibility complaints, the Commission will place manufacturers directly in between their customers (the employers) and the complainants (employees). A manufacturer

²³ Notice at **para.** 136.

²⁴ Respondents have 30 days to answer formal complaints. 47 C.F.R. § 1.724(a).

²⁵ A manufacturing competitor could use the Section 255 process to hinder the efforts of its competitors or to try to obtain sensitive product information. Groups or individuals that oppose unrelated policies of manufacturers could file unwarranted Section 255 complaints to harass manufacturers.

should not be placed in a position that jeopardizes its relationship with its customers, which in the instance of business equipment is generally not the individual employee that uses a single piece of the business system. If an employee has not identified himself as being disabled and requiring additional accessibility to telecommunications (as he is required to do by the Americans with Disabilities Act), or has not persuaded his employer to purchase equipment that would solve his accessibility problems, what should a manufacturer do if the employee complains to the Commission? Even if a manufacturer had in stock a piece of equipment that would solve the accessibility problem, to whom should the manufacturer turn? The manufacturer cannot require its customer/employer to purchase equipment. Furthermore, the manufacturer cannot force its customer/employer to install that equipment in the workplace. The manufacturer simply cannot resolve Section 255 complaints filed by employees/users of equipment by itself, so it should not be the first stop for work-related Section 255 complaints. The Commission should consider the special circumstances faced by the manufacturers of business equipment when developing complaint processes to ensure that those processes are fair to both consumers/users of equipment and manufacturers.

The Commission must protect commercially sensitive information submitted to the Commission pursuant to Section 255.

Finally, because information used to determine whether incorporating a feature is readily achievable directly relates to a manufacturer's product design and development process, such information may be highly proprietary and sensitive. Public disclosure of information related to the design, manufacture, and pricing of products could jeopardize manufacturers' competitive positions. Therefore, Lucent requests that the Commission

establish a rebuttable presumption that information submitted in response to Section 255 complaints is confidential. Furthermore, we request that the Commission not require manufacturers to disclose commercially sensitive information to complainants prior to obtaining commercially reasonable assurances that commercially sensitive information will be protected from disclosure. Such assurances could be effected, for example through non-disclosure agreements, although these alone may not be sufficient in cases where the recipient of such information may not have the financial viability to compensate a manufacturer if commercially sensitive information fails to be protected from unauthorized disclosure.

Initial Regulatory Flexibility Analysis

Section 1193.43 of the Access Board's Guidelines appears to conflict with Section 68.3 17 of the Commission's rules.

The Commission tentatively concluded that the Access Board's Guidelines "do not overlap, duplicate, or conflict with" existing Commission rules. Pursuant to Section 68.3 17 of the Commission's rules, telephones must be equipped with a receive volume control that provides a minimum of 12 **dB** gain and a maximum of 18 **dB gain**.²⁶ Section 1193.43 of the Access Board's Guidelines requires telephones to provide a minimum of 20 **dB gain**.²⁷ Because these rules appear to conflict with each other, the Commission should clarify manufacturers' volume control requirements.

Conclusion

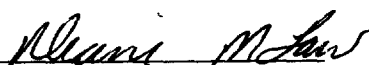
Although we fully support the goals of Section 255, Lucent strongly urges the Commission to implement Section 255 in a realistic manner, one that does not penalize

²⁶ 47 C.F.R. §68.317.

large manufacturers and does not alter manufacturers' incentives to invest in the development of new accessible technologies. The Commission's complaint resolution rules also should respect manufacturers' resource limitations by ensuring that frivolous Section 255 complaints do not deplete resources that could be deployed to resolve legitimate complaints or to develop new technologies. Lucent firmly believes that such a realistic approach to Section 255 is workable and can yield substantial benefits for consumers with disabilities.

Respectfully submitted,

Lucent Technologies

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²⁷Section 1193.43(e) of the Access Board Guidelines. *Notice* at C6.